

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ44-220; FRL-\_\_\_\_\_]

Approval and Promulgation of Implementation Plans; New Jersey;  
Nitrogen Oxides Budget and Allowance Trading Program;

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey. This SIP revision meets the requirements of the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," known as the "NOx SIP Call." The SIP revision includes a narrative and a regulation that establish a statewide nitrogen oxides (NOx) budget and a NOx allowance trading program that begins in 2003 for large electricity generating and industrial sources. The intended effect of this SIP revision is to reduce emissions of NOx in order to help attain the national ambient air quality standard for ozone. EPA is approving this action pursuant to section 110 of the Clean Air Act. In addition, as a result of today's action, the Clean Air Act section 126 rule requirements will no longer apply to sources in the State of New Jersey.

EFFECTIVE DATE: This rule will be effective [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella at (212) 637-3892 for general information, Rick Ruvo at (212) 637-4014 for information on the Trading Program, or Demian Ellis at (212) 637-3713 for information on the Budget Demonstration, all of the Air Programs Branch, Region II Office.

## SUPPLEMENTARY INFORMATION:

### **Overview**

The Environmental Protection Agency (EPA) is approving the New Jersey Department of Environmental Protection's (New Jersey's) Nitrogen Oxides (NO<sub>x</sub>) SIP Call State Implementation Plan (SIP) revision. The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION section:

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#### **I. EPA's Action**

A. What action is EPA approving today?

EPA is approving revisions to New Jersey's ground level ozone SIP which New Jersey submitted on December 10, 1999 and July 31, 2000. These SIP revisions include an amended regulation, N.J.A.C. 7:27-31 (Subchapter 31), "NOx Budget Program," adopted July 28, 2000, and a narrative entitled, "State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Ozone and Carbon Monoxide National Ambient Air Quality Standards-Meeting the Requirements of the Regional NOx Cap Program and Transportation Conformity Budgets Related to the Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards," dated December 10, 1999 and supplemented on July 31, 2000. New Jersey submitted the regulation and narrative, including NOx reducing measures, in order to strengthen its one-hour ozone SIP and to comply with the NOx SIP Call during each ozone season, i.e., May 1 through September 30, beginning in 2003. EPA has determined that New Jersey's submittal is fully approvable as a SIP-strengthening measure for New Jersey's one-hour ground level ozone SIP and as meeting the NOx SIP Call requirements. On May 31, 2000, EPA found the mobile source emissions budgets to be adequate for transportation conformity purposes. (See 65 FR 36689, June 9, 2000).

B. Why is EPA approving this action?

EPA is approving this action in order to:

- Approve New Jersey's NOx Budget Trading Program (Subchapter 31) under the NOx SIP Call as a control program that reduces NOx emissions, a precursor of ozone, and which therefore helps to achieve the national ambient air quality standard for ozone in nonattainment areas in New Jersey,  
Fulfill New Jersey's and EPA's requirements under the NOx SIP Call,  
Make New Jersey's NOx allowance trading regulation federally enforceable and available for credit in the SIP, and  
Make New Jersey's SIP narrative, including the ozone season NOx budget and State reporting requirements, federally enforceable as part of the New Jersey SIP.

These actions have the effect of assuring that the section 126 requirements will no longer apply to New Jersey sources.

C. What is Phase 2 of the NOx SIP Call and how does it relate to today's action?

On March 3, 2001, the Circuit Court of the District of Columbia handed down its decision in Michigan v. EPA, which largely upheld the NOx SIP Call but remanded a few minor issues to EPA.

After this decision, EPA decided to separate the requirements of the regional strategy into two phases. The deadline for states to submit their plans to comply with Phase 1 of the strategy was October 30, 2000. Details of Phase 1 were outlined in April 11, 2000 letters to Governors in the affected states, including New Jersey. New Jersey met the Phase 1 SIP submittal requirements by its December 1999 and July 2000 SIP revisions.

On January 5, 2001, the outgoing Administrator signed a notice of proposed rulemaking for Phase 2 of the NOx SIP Call. This notice was placed on EPA's website at <http://www.epa.gov/ttn/rto/sip/related.html#prop> but has not been published pending further EPA evaluation. Phase 2 is designed to respond to issues remanded by the court by addressing, among other things, whether, and if so, how, a small subclass of facilities that generate electricity - cogenerators - should be included in the rule, and what control levels should be assumed in reducing NOx from large, stationary internal combustion (IC) engines. The proposal would affect 22 jurisdictions<sup>1</sup>, including New Jersey, and would identify a

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<sup>1</sup>Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia.

range of due dates for the affected states subject to Phase 2 to submit a SIP revision.

EPA fully expects that the Phase 2 proposed rule would have no more than a slight effect on New Jersey Statewide NOx emission budgets. In the January 5, 2001 version of EPA's notice of proposed rulemaking, New Jersey's Phase 2 Statewide 2007 NOx emissions budget would be 96,876 tons. The corresponding Phase 2 NOx emission reductions from the 2007 baseline emissions would be 8,613 tons. New Jersey's December 1999 and July 2000 SIP revisions, which EPA is approving today, includes a demonstration, including a detailed emission inventory, that the Statewide emissions would not exceed 96,275 tons in 2007 corresponding to NOx reductions of 9,214 tons (see 65 FR 71278 and 77695). Therefore, EPA fully expects that New Jersey's December 1999 and July 2000 SIP revisions will meet the Phase 2 Statewide budgets when finalized by EPA.

Therefore, in today's action EPA is also approving New Jersey's December 1999 and July 2000 SIP revisions as fully meeting the NOx SIP Call requirements including the Phase 2 Statewide NOx emissions budget that will apply when the Phase 2 rulemaking is completed. EPA recognizes that its Phase 2 rulemaking has not been completed, but as noted above, fully expects that the final Statewide budget

promulgated in that rulemaking will be no more stringent than New Jersey's current budget. Once EPA finalizes the Phase 2 rule, should New Jersey's adopted 2007 NOx emissions budget (as submitted in December 1999 and July 2000) exceed the final Phase 2 budget (so that additional NOx reductions are needed), EPA will take appropriate action.

D. What is the impact of today's action on EPA's finding under the Clean Air Act section 126 rule?

As stated in the November 30, 2000 Proposed Rulemaking (see 65 FR 71278 at 71282), a SIP meeting the March 2, 2000 budgets and providing for reductions by May 1, 2003, should fully address the significant NOx transport from that state. Therefore, upon approval of such a SIP, section 52.34(i) of the section 126 rule would apply to automatically withdraw the section 126 requirements for sources in that state. As noted immediately above, EPA has no reason to expect that the Phase 2 budget for New Jersey, when finalized, will mandate any additional NOx reductions. Thus, meeting the March 2, 2000 budget is adequate for New Jersey's SIP to meet the NOx SIP Call requirements. Since the New Jersey SIP revision meets the March 2, 2000 budgets, provides for reductions by May 1, 2003, and is fully approved today as proposed, the section 126 requirements are



automatically withdrawn, as of the effective date of this final rule, for sources in the State of New Jersey pursuant to 40 CFR 52.34(i).

E. When did EPA propose to approve New Jersey's SIP revision? On November 30, 2000, as corrected on December 12, 2000, EPA published in the Federal Register (65 FR 71278 and corrected at 77695) a Proposed Rulemaking to approve New Jersey's regulation and SIP narrative as a SIP revision and providing for a 30-day public comment period, which ended on January 2, 2001.

F. What are the public comments on EPA's proposal? EPA received no public comments regarding the Proposed Rulemaking.

G. Where is additional information available on EPA's action? A detailed discussion of this program is available in the November 30, 2000 Proposed Rulemaking (65 FR 71278), as corrected in the December 12, 2000 Federal Register (65 FR 77695). A Technical Support Document, prepared in support of the proposed rulemaking, contains the full description of New Jersey's submittal and EPA's evaluation. A copy of the Technical Support Document is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

## **II. Conclusion:**

EPA is approving New Jersey's December 10, 1999 and July 31, 2000 SIP submittals, including New Jersey's July 31, 2000 supplement, that address EPA's NOx SIP Call. EPA has reviewed New Jersey's control measures and projected reductions and finds them approvable. Therefore, EPA is approving Subchapter 31 and the SIP narrative into the New Jersey SIP at this time. In addition, as a result of today's action, the Clean Air Act section 126 rule requirements will no longer apply to sources in the State of New Jersey.

## **III. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in

the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will this rule have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

#### Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. sections 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major" rule as defined by 5 U.S.C. section 804(2). This rule will be effective [FEDERAL REGISTER OFFICE: insert date 30 days from date of publication of this document in the Federal Register].

#### Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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Dated:

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William J. Muszynski, P.E.,  
Acting Regional Administrator  
Region 2

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart FF - New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(70) to read as follows:

52.1570 Identification of plan.

*	*	*	*	*
(c)	*	*	*	
*	*	*	*	*

(70) Revisions to the State Implementation Plan submitted on December 10, 1999 and July 31, 2000 by the State of New Jersey Department of Environmental Protection that establishes the NOx Budget Trading Program, a 2007 Statewide NOx emissions budget, and a commitment by New Jersey to comply with the section 51.122 reporting requirements.

(i) Incorporation by reference:

(A) Regulation Subchapter 31 of Title 7, Chapter 27 of the New Jersey Administrative Code, entitled "NOx Budget Program," adopted on July 31, 2000 and effective on August 21, 2000.

(ii) Additional material:

(A) Letter from State of New Jersey Department of Environmental Protection dated December 10, 1999, requesting EPA approval of the Ozone SIP, entitled "State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Ozone and Carbon Monoxide National Ambient Air Quality Standards; Meeting the Requirements of the Regional NOx Cap Program and Transportation Conformity Budgets Related to the Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards; December 1, 1999," as a revision to the State of New Jersey Implementation Plan for ozone.



(B) Letter from State of New Jersey Department of Environmental Protection dated July 31, 2000, requesting EPA approval of the NOx Budget Program as a revision to the New Jersey State Implementation Plan for ozone. This submittal also contains 2007 State-wide NOx emissions budget information that is supplemental to the December 10, 1999 SIP submittal.

3. Section 52.1605 is amended by revising the entry under Title 7, Chapter 27 for Subchapter 31 in the table to read as follows:

§52.1605 EPA - approved New Jersey regulations

New Jersey State regulation	State effective date	Latest EPA approval date	Comments
Title 7, Chapter 27  * * * * *  Subchapter 31, NOx Budget Program     * * * * *	Aug. 21, 2000	[Insert date of publication and FR page citation.]	Incorporates NOx SIP Call and NOx Budget Trading Program for 1999 through 2003 and thereafter.

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